

#2928 State Board of Education #6-325:
Safe Schools was originally delivered on
1/26/12 and was withdrawn on 3/9/12. The
current version of the final-omit regulation
was delivered on 3/28/12 and can be found in
the final regulations section of the #2928
page on our website.

Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency: State Board of Education

(2) Agency Number: 006

Identification Number: 6-325

INDEPENDENT REGULATORY
REVIEW COMMISSION

RECEIVED
IRRC

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IRRC Number: 2928

(3) PA Code Cite: 22 Pa. Code Chapter 10, Safe Schools, § 10.1, § 10.2, § 10.3, § 10.4, § 10.5, § 10.6, § 10.7, § 10.8, § 10.9, and Appendix A (Model Memorandum of Understanding)

(4) Short Title: 22 Pa. Code Chapter 10, Safe Schools

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Karen Molchanow, Acting Executive Director, State Board of Education, (717) 787-3787, kamolchano@pa.gov

Secondary Contact:

(6) Type of Rulemaking (check applicable box):

☐ Proposed Regulation

☐ Final Regulation

☒ Final Omitted Regulation

☐ Emergency Certification Regulation;

☐ Certification by the Governor

☐ Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The purpose of Chapter 10 is to establish and maintain a cooperative relationship between school entities and local police departments in the reporting and resolution of incidents that occur on school property, at any school sponsored activity, or on a conveyance providing transportation to or from a school or school sponsored activity. This new Chapter establishes protocols for schools in notifying police of offenses that require mandatory reporting and offenses for which school administrators have discretion in reporting to police; establishes protocols for emergency response and preparedness; establishes procedures and protocols for the response and handling of students with disabilities; and sets forth a model memorandum of understanding between a school entity and its local police.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Act 104 of 2010 added Section 1302.1-A to the Public School Code (24 P.S. § 13-1302.1-A), which directs the State Board of Education to promulgate final-omitted regulations that include a model memorandum of understanding between school entities and local police departments; protocol for the immediate notification of police when offenses listed under 24 P.S. § 13-1303-A(b)(4.1) occur on school property; protocol for the notification of the police at the discretion of the chief school administrator when offenses listed under 24 P.S. § 13-1303-A(b)(4.2) occur on school property; protocol for emergency and non-emergency response by the police, including a requirement that school districts supply local police departments with a copy of their comprehensive disaster response and emergency preparedness plans; and procedures and protocols for the response and handling of students with a disability, including

procedures related to student behavior as required by 22 Pa. Code §§ 14.104 (relating to special education plans) and 14.133 (relating to positive behavior support).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

As referenced in question # 8, Chapter 10 (Safe Schools) was developed in response to Section 1302.1-A of the Public School Code, which directs the State Board of Education to promulgate final-omitted regulations by February 14, 2012.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Chapter 10 was developed to fulfill the requirements of provisions established in Section 1302.1-A of the Public School Code by Act 104 of 2010.

The regulation will improve the relationship between school entities and local police departments by providing guidance for the parties in executing mutual agreements that define how they will work collaboratively to respond to and resolve incidents that occur on school property and that include components that will improve accuracy in the reporting of school violence. Chapter 10 will further improve the relationship between public schools and law enforcement by creating opportunities for schools to help local police become more knowledgeable about appropriately responding to students with disabilities and by ensuring police are furnished with current information about their local schools that is critical to have readily accessible in responding to an emergency.

The regulation also will improve consistency in how public school officials across the Commonwealth notify police when incidents of violence occur on school property by establishing protocols for immediate notification of certain offenses and protocols for school administrators in determining whether to engage law enforcement in other less serious offenses. Further, the regulation will engage students' parents and guardians as partners in addressing incidents of violence that occur on school property by requiring schools to immediately notify the parent or guardian of a victim or suspect directly involved in an incident.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data did not serve as the basis for this regulation. As required by Section 1302.1-A of the Public School Code, Chapter 10 was developed in consultation with an Advisory Committee comprised of a police chief, juvenile public defender, school superintendent, school principal, district attorney, school district solicitor, special education supervisor, special education advocate and in-school probation officer, and one designee each from the Department of Education, the Pennsylvania Commission on

Crime and Delinquency, the Municipal Police Officers' Education and Training Commission, the Juvenile Court Judges' Commission, and the Pennsylvania State Police.

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

No individual or entity is expected to be adversely impacted by the rulemaking.

(13) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

All public school entities (including school districts, charter schools, cyber charter schools, Intermediate Units and area vocational-technical schools) are required to comply with the regulation. Currently, there are approximately 3,350 public schools in the Commonwealth that serve 1.78 million students and employ approximately 157,944 professional staff. The regulation also requires school entities to engage Pennsylvania's approximately 1,123 local police departments in executing memorandums of understanding.

(14) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The estimated fiscal costs to schools to implement Chapter 10 are negligible for the following reasons:

- Statutory provisions requiring schools to form memorandums of understanding with local law enforcement were initially established by Act 26 of 1995 and, thus, represent an ongoing responsibility for school entities. Additionally, Chapter 10 includes a model memorandum of understanding (MOU) in Appendix A that can provide guidance for school entities in implementing the MOU requirements of the regulation. Further, the recent establishment of the Office for Safe Schools within the Department of Education will make additional resources and technical assistance available to school entities.
- Provisions in the regulation that provide for consideration of using school-based diversion programs or school-wide positive behavior supports to address a student's behavior reference available programs and do not create a mandate for school entities to establish new programs.
- Provisions in the regulation that require school entities to invite representatives of local police departments to participate in trainings in appropriately responding to students with disabilities reference trainings that schools already are required to provide for school staff under 22 Pa.

Code §§ 14.104 (relating to special education plans) and 14.133 (relating to positive behavior support) and do not create a mandate for school entities to provide additional trainings.

(15) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

After consulting with the Municipal Police Officers' Education and Training Commission, the Board estimates that the regulation carries no anticipated costs for local governments. Statutory provisions requiring schools to form memorandums of understanding with local law enforcement were initially established by Act 26 of 1995 and, thus, represent an ongoing task in which police already should be engaged.

(16) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation carries no anticipated cost for state government. The Department of Education, Office for Safe Schools, is currently responsible for compliance monitoring of memorandums of understanding filed with the Department and will meet the requirements of 22 Pa. Code § 10.4(d) and § 10.4(e) using its current budget and staff complement.

(17) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

As described in questions 14, 15 and 16, costs to the regulated community are estimated to be negligible and no costs are anticipated for local governments or state government.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						

Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 2008-2009	FY -2 2009-2010	FY -1 2010-2011	Current FY 2011-2012
Education - GGO	\$27,512,000	\$26,399,000	\$25,782,000	\$23,963,000
Basic Education	\$5,226,142,000	\$4,868,741,000	\$4,733,523,000	\$5,354,629,000
Special Education	\$1,026,815,000	\$1,026,815,000	\$1,026,815,000	\$1,026,815,000

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation carries no anticipated cost for local governments or state government and negligible costs for the regulated community.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

As required by Section 1302.1-A of the Public School Code, the State Board convened and consulted with an Advisory Committee in the development of Chapter 10. The composition of the Advisory Committee was defined in statute to include representatives from the law enforcement community, juvenile justice professionals, school administrators, and advocates for students with disabilities. Membership of the School Safety Reporting and Response Advisory Committee was ratified by the State Board on March 16, 2011 as follows:

Robert Martin, Police Chief, Susquehanna Township; *Advisory Committee Chairman*
 Dan Ames, Lieutenant, Pennsylvania State Police
 Raymond Bauer, In-school Probation Officer, Allegheny County Juvenile Probation
 John Cookus, Juvenile Court Judges' Commission
 Dr. Carolyn Dumaresq, Deputy Secretary, PA Department of Education
 Dr. Linda Grobman, Superintendent, Radnor Township School District

Barbara Lee Krier, Sr. Assistant Public Defender, Juvenile Unit, York County Public Defender's Office
 Bob Listenbee, Chief, Juvenile Unit, Defender Association of Philadelphia
 Sallie Lynagh, Special Education Advocate, Disability Rights Network of Pennsylvania
 Edward Marsico, District Attorney, Dauphin County
 Dr. Jennifer Murphy, Principal, Carrick High School, Pittsburgh Public Schools
 Lee Nunery, Deputy Superintendent, School District of Philadelphia
 John F.X. Reilly, Esq., Solicitor, Ridley School District
 Linda Rosenberg, Executive Director, PA Commission on Crime and Delinquency
 (*Ms. Rosenberg was represented by Mike Pennington, Director, Office of Juvenile Justice and
 Delinquency Prevention, PCCD)
 Patty Todd, Special Education Supervisor, Intermediate Unit 12 (Adams, Franklin & York Counties)
 Dr. Beverly Young, Administrative Officer, Municipal Police Officer's Education & Training Commission

In addition to the members required by statute, the Advisory Committee also was supported by the following resource specialists from the Pennsylvania Department of Education: Michael Kozup, Office for Safe Schools; Tom Seben, Bureau of Special Education. Finally, Jonathan Peri, Chair of the State Board's School and University Safety Committee, served as the Board's liaison with the Advisory Committee.

The Advisory Committee held public meetings in Harrisburg during 2011 on April 14, June 23, August 12 and September 7. The Advisory Committee also formed a Subcommittee on Students with Special Needs to facilitate focused discussion on procedures and protocols for the response and handling of students with disabilities. The Subcommittee convened public meetings on July 13, 2011, and July 27, 2011. Each meeting of the Advisory Committee and its Subcommittee included an opportunity for public comment.

Opportunities for public comment on the development of Chapter 10 also were made available at public meetings of the Board's School and University Safety Committee (March 15, 2011; July 19, 2011; September 20, 2011; and November 15, 2011), public meetings of the Council for Basic Education (March 16, 2011; May 18, 2011; July 20, 2011; September 21, 2011; and November 15, 2011), and public meetings of the State Board of Education (March 16, 2011; May 18, 2011; July 20, 2011; September 21, 2011; and November 16, 2011).

In addition to the numerous opportunities to provide public comment at meetings of the Advisory Committee and the State Board, the Board also offered an unofficial public comment period from September 22 through September 30, 2011, soliciting written comments on a draft copy of Chapter 10 and the model Memorandum of Understanding.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Through the School Safety Reporting and Response Advisory Committee, the Board convened a diverse group of stakeholders to inform the drafting of this final-omitted regulation. The rulemaking reflects the input received on the most effective approach to achieve the requirements of § 1302.1-A of the Public School Code.

(21) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Chapter 10 includes students "for whom an evaluation is pending" in the definitions of "student with a

disability" and "protected handicapped student". While federal regulations do not require protections for such students based solely on reporting an incident to law enforcement, such students were included in Chapter 10 to be consistent with their inclusion in § 1301-A of the Public School Code.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The regulation provides protection to students of the Commonwealth by establishing and maintaining a cooperative relationship between school entities and law enforcement in resolving incidents that occur on school property. The regulation will not put Pennsylvania at a competitive disadvantage.

(23) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The rulemaking will not affect other regulations of the Department of Education or other state agencies. However, the Pennsylvania Emergency Management Agency (PEMA) provides emergency response planning guidance to schools in its All-Hazards School Safety Planning Toolkit. The toolkit currently includes a sample Memorandum of Understanding between school entities and local police departments. The Board plans to work with PEMA to update its Toolkit to include the model Memorandum of Understanding adopted as part of Chapter 10 to ensure consistency in the model document provided across agencies.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Section 10.4(d) includes current statutory requirements for school entities to file Memorandums of Understanding with the Department of Education's Office for Safe Schools on a biennial basis. The regulations further require schools that execute a Memorandum of Understanding (MOU) that is substantively different from the model MOU included in Appendix A to submit a statement of reasons for the differences as part of this filing. The Office for Safe Schools will monitor and provide feedback to the Board on such filings to inform the Board's statutorily-required biennial review of the model MOU.

Section 10.7(g) requires school entities to convene the IEP team of a student with a disability who does not have a positive behavior support plan when local police are notified that the student has committed an incident on school property. The IEP team would discuss whether a positive behavior support plan should be developed to address the student's behavior.

Section 10.7(h) requires school entities to consult with the parents of a protected handicapped student who does not have a positive behavior support plan when local police are notified that the student has committed an incident on school property to consider whether a positive behavior support plan should be developed to address the student's behavior.

Section 10.9(b) requires school entities to document attempts made to reach the parent or guardian of a victim or suspect directly involved in an incident on school property.

(25) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Provisions of the regulation are designed to ensure that students with disabilities and protected handicapped students involved in incidents on school property are responded to in a manner consistent with the behavioral support needs of the child.

(26) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: _____ N.A. _____
- B. The date or dates on which public meetings or hearings will be held: _____ N.A. _____
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: _____ N.A. _____
- D. The expected effective date of the final-form regulation: Upon publication in
Pennsylvania Bulletin
- E. The date by which compliance with the final-form regulation will be required: Upon publication in
Pennsylvania Bulletin
- F. The date by which required permits, licenses or other approvals must be obtained: _____ N.A. _____

(27) Provide the schedule for continual review of the regulation.

The Board will review Chapter 10 on a regular basis in accordance with the Board's policy and practice respecting all of its regulations.

The Board will review the model Memorandum of Understanding in Appendix A on a biennial basis, as required by § 1302.1-A of the Public School Code.

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**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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<p>Copy below is hereby approved as to form and legality Attorney General</p> <p>BY _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved Objections attached</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by</p> <p><u>State Board of Education</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO <u>ODE-325</u> DATE OF ADOPTION <u>Nov. 16, 2011</u></p> <p>BY <u>Kate M. Mahan</u> TITLE <u>Acting Executive Director</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality Executive or Independent Agencies</p> <p>BY <u>Megan L. Consedine</u> Megan L. Consedine</p> <p><u>JAN 24 2011</u> DATE OF APPROVAL</p> <p><u>Deputy General Counsel</u> (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable No Attorney General approval or objection within 30 days after submission</p>
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Final Omitted Rulemaking

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 10]

Safe Schools

The State Board of Education (Board) adopts Chapter 10 (relating to safe schools), including Appendix A, as a final-omitted rulemaking. The Board acts under authority of section 1302.1-A of the Public School Code of 1949 (24 P.S. § 13-1302.1-A (relating to regulations)). Notice of proposed rulemaking is omitted in accordance with the process stipulated by section 1302.1-A.

Purpose

This rulemaking is designed to establish and maintain a cooperative relationship between school entities and local police departments in the reporting and resolution of incidents that occur on school property, at any school sponsored activity, or on any conveyance providing transportation to or from a school or school sponsored activity.

Background

Act 104 of 2010 added section 1302.1-A to the Public School Code, which directs the Board to promulgate regulations that include a model memorandum of understanding between school entities and local police departments; establish protocol for the immediate notification of police when offenses listed under section 1303-A(b)(4.1) of the School Code (24 P.S. § 13-1302.1-A(b)(4.1)) occur on school property; establish protocol for the notification of police at the discretion of the chief school administrator when offenses listed under section 1303-A(b)(4.2) of the School Code (24 P.S. § 13-1302.1-A(b)(4.2)) occur on school property; establish protocol for emergency and nonemergency response by the police; and establish procedures and protocols for the response and handling of students with a disability. *See* 24 P.S. § 13-1302.1-A(a).

Section 1302.1-A(a) of the School Code further requires that the regulations include provisions that provide for biennial review and revision, as necessary, of the Board's model

memorandum of understanding; requires school districts to share a copy of their comprehensive disaster response and emergency plan required by section 7701(g) of the Pennsylvania Emergence Management Services Code (35 Pa.C.S. § 7701(g) (relating to duties concerning disaster prevention)) with local police; and, in addressing the handling of students with disabilities, take into account procedures related to student behavior as required by 22 Pa. Code §§ 14.104 (relating to special education plans) and 14.133 (relating to positive behavior support). Finally, section 1302.1-A(a) directs the Board to promulgate the rulemaking as final-omitted regulations.

In promulgating the regulations mandated by Act 104, the Board was required by section 1302.1-A(b) of the School Code (24 P.S. § 13-1302.1-A(b)) to convene and consult with an advisory committee comprised of a police chief, juvenile public defender, school superintendent, school principal, district attorney, school district solicitor, special education supervisor, special education advocate and in-school probation officer, and one designee each from the Department of Education, the Pennsylvania Commission on Crime and Delinquency, the Municipal Police Officers' Education and Training Commission, the Juvenile Court Judges' Commission, and the Pennsylvania State Police. The membership of the advisory committee was approved by the Board at a public meeting held March 16, 2011.

From its first meeting on April 14, 2011, through the conclusion of its deliberations on September 7, 2011, the Chapter 10 Advisory Committee worked in conjunction with the Board's School and University Safety Committee. The Advisory Committee also formed a Subcommittee on Students with Special Needs to facilitate focused conversation on the protocols and procedures for the response and handling of students with disabilities. The Board was kept abreast of the Advisory Committee's work through regular reports of the chairman of the Board's School and University Safety Committee made during the Board's bi-monthly meetings.

Following the conclusion of the Advisory Committee's deliberations, an initial draft of Chapter 10 and the model Memorandum of Understanding (Appendix A) were presented to the Board's School and University Safety Committee at its public meeting on September 20, 2011. Committee members reviewed and provided input on the draft, which was subsequently presented to the full State Board of Education for additional comment at its public meeting on September 21, 2011.

The Board thereafter established an unofficial public comment period from September 22 through September 30, 2011, soliciting written comments on the draft regulation. The Board considered revisions to the draft regulations based on the public comments received and offered three additional opportunities for public comment during its November 15-16 meeting before taking action to approve the rulemaking.

Summary of the Final-Omitted Rulemaking

The regulations establish a new chapter within Title 22 of the *Pennsylvania Code* – Chapter 10 – that addresses the requirements outlined in section 1302.1-A of the School Code. Major components include:

Memoranda of Understanding

The regulations include the statutory requirements that schools biennially execute and file with the Department of Education (PDE) memoranda of understanding (MOU) with their local police, and that the Board develop a model MOU and review and revise the model MOU as necessary every two years. The rulemaking also directs schools to consult and consider – but creates no mandate for schools to adopt – the model MOU developed by the Board. The regulations further require a school that executes an MOU that is substantively different from the model MOU included in Appendix A to submit a statement of reasons for the differences as part of its filing with the Department. PDE's Office for Safe Schools will monitor and provide feedback to the Board on such filings to inform the Board's statutorily-required biennial review of the model MOU.

Immediate Notification

As directed by statute, the regulations require school administrators to immediately notify local police when offenses listed under section 1303-A(b)(4.1) of the School Code (24 P.S. § 13-1303-A(b)(4.1)) occur on school property. In addition to notifying law enforcement when an incident occurs, the rulemaking provides for school entities to consider requiring students who commit such incidents to complete available school-based programs to address the student's behavior, provided that law enforcement is notified of the student's placement in the program. The

rulemaking clarifies that use of a school-based program to address a student's behavior shall not limit law enforcement's discretion to take appropriate action to address the incident.

Discretionary Notification

As directed by statute, the regulations provide school administrators discretion in engaging law enforcement when offenses listed under section 1303-A(b)(4.2) of the School Code (24 P.S. § 13-1303-A(b)(4.2)) occur on school property. The rulemaking identifies factors a school administrator may consider in determining whether to notify police of such incidents, including: the seriousness of the situation; the school's ability to defuse or resolve the situation; the child's intent; the child's age; whether the student has a disability and, if so, the type of disability and its impact on the student's behavior. The regulations also provide for school administrators to consider using available school-based diversion programs and available school-wide positive behavior supports to address the behavior of students who have committed an offense over which they have discretion in reporting to the police.

Response and Handling of a Student With a Disability

The regulations further assist in strengthening communication between public schools and law enforcement by creating opportunities for schools to help law enforcement officers become more knowledgeable about appropriately responding to students with disabilities. Chapter 10 requires school entities to share copies of their procedures on behavior support services with local police and to invite local police to participate in staff trainings in the use of positive behavior supports, de-escalation techniques, and appropriate responses to student behavior that may require immediate intervention.

The regulations also direct schools to respond to students with disabilities who commit incidents of misconduct in a manner consistent with the school entity's special education plan and behavior support program (as provided for in 22 Pa. Code §§ 14.104 and 14.133) and, for protected handicapped students, in a manner consistent with the student's service agreement (as provided for in 22 Pa. Code § 15.3). For a student with a disability who does not have a positive behavior support plan and who is referred to law enforcement for committing an incident under section 1303-A(b)(4.1) or (4.2) of the School Code (24 P.S. §§ 13-1303-A(b)(4.1), 13-1303-A(b)(4.2)), the regulation requires school entities to convene a meeting of the student's IEP team to discuss

whether a positive behavior support plan should be developed as a next step to address the student's behavior. Chapter 10 includes a parallel provision addressing protected handicapped students who do not have a positive behavior support plan and who are referred to law enforcement, and requires schools to consult with the student's parents to consider whether a positive behavior support plan should be developed as part of the student's service agreement.

Emergency and Nonemergency Response and Preparedness

The Pennsylvania Emergency Management Agency (PEMA) currently provides extensive guidance to school districts in developing a comprehensive disaster response and emergency preparedness plan to comply with section 7701(g) of the Pennsylvania Emergency Management Services Code (35 Pa.C.S. § 7701(g) (relating to plans)). Chapter 10 directs school districts to develop emergency preparedness plans that are consistent with PEMA guidelines and ensures that all first responders – local police, fire departments and county emergency management agencies – will be provided with a copy of their local districts' emergency preparedness plans. The rulemaking also identifies information that is critical to have readily accessible in responding to an emergency and directs schools to furnish such information to local police and fire departments annually.

Notification to Parents/Guardians

The regulation engages students' parents and guardians as partners in addressing incidents of violence that occur on school property by requiring schools to immediately notify the parent or guardian of a victim or suspect directly involved in an incident listed under sections 1303-A(b)(4.1) or (4.2) of the School Code (24 P.S. §§ 13-1303-A(b)(4.1), 13-1303-A(b)(4.2)). As part of this communication, schools must inform parents whether the police have been, or may be, notified of the incident. The rulemaking also recognizes that circumstances may arise in which it is not possible to immediately reach a student's parent or guardian and, therefore, requires schools to document attempts made to reach a parent to show they have made a good faith effort to provide immediate notification.

Model Memorandum of Understanding (Appendix A)

As directed by statute, the rulemaking includes a model memorandum of understanding between school entities and local police departments that may serve as a guide for the MOU

required to be executed by school entities on a biennial basis. The model MOU defines the working relationship between a school entity and local police in responding to incidents that occur on school property and in ensuring the accuracy of school violence data reported to the Department of Education.

Affected Parties

The final-omitted rulemaking will principally affect the students and professional employees of the public schools of this Commonwealth.

Cost and Paperwork Estimates

The regulation reflects statutory requirements for school entities to execute a memorandum of understanding (MOU) with local police departments biennially and to file such agreements with the Department of Education's Office for Safe Schools. Chapter 10 further requires a school entity that executes an MOU substantially different from the model MOU included in Appendix A to include a statement of reasons for the differences as part of its filing with the Office for Safe Schools and for the Office to compile this information to help inform the Board's biennial review of the model MOU. This work will be managed through the Department's existing staff complement and carries no anticipated cost for state government.

Costs to school entities are estimated to be negligible for several reasons. First, statutory provisions requiring schools to form memoranda of understanding with local police departments were initially established by Act 26 of 1995 and, thus, represent an ongoing responsibility for both school entities and local police. Second, Chapter 10 includes a model MOU that can provide guidance for schools in implementing the MOU requirements of the regulation. Third, the recent establishment of the Office for Safe Schools within the Department of Education will make additional resources and technical assistance available to school entities. Fourth, provisions in the rulemaking that provide for consideration of using school-based diversion programs or school-wide positive behavior supports to address a student's behavior reference available programs and do not create a mandate for school entities to establish new programs. Finally, provisions in the regulation that require school entities to invite representatives of local police departments to participate in trainings in appropriately responding to students with disabilities reference trainings that schools already are required to provide for school staff under 22 Pa. Code §§ 14.104 (relating to special

education plans) and 14.133 (relating to positive behavior support) and do not create a mandate for school entities to provide additional trainings.

Effective Date

The final-omitted rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

The Board will review the effectiveness of Chapter 10 every four years in accordance with the Board's policy and practice respecting all of its regulations. Thus, no sunset date is necessary.

Also, in compliance with section 1302.1-A of the School Code (24 P.S. § 13-1302.1-A), and as provided in 22 Pa. Code § 10.4(e), the Board will review and revise, as necessary, the model Memorandum of Understanding in Appendix A on a biennial basis.

Contact Person

Interested persons may contact Karen Molchanow, Acting Executive Director, State Board of Education, 333 Market Street, 1st Floor, Harrisburg, PA 17126, (717) 787-3783, TDD (717) 787-7367 or ra-stateboardofed@pa.gov.

Final-Omitted Rulemaking

The Board has promulgated this regulation as a final-omitted rulemaking as directed by section 1302.1-A of the Public School Code (24 P.S. § 13-1302.1-A).

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on January 26, 2012, the Board submitted a copy of these final-omitted regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Education and the Senate Committee on Education. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101 – 732-506).

Under section 5.1(d) of the Regulatory Review Act, these regulations were approved/deemed approved by the House Education Committee on **TBD**, and were approved/deemed approved by the Senate Education Committee on **TBD**. Under section 5.1(e) of the Regulatory Review Act, IRRC met and approved the regulations on **TBD**.

Findings

The Board finds that the amendment of the regulation in the manner provided in this order is appropriate under section 1302.1-A of the Public School Code of 1949.

Order

The Board, acting under the authority of the Public School Code of 1949, orders that:

- (a) The regulations of the Board, 22. Pa. Code Chapter 10, including Appendix A, are approved.
- (b) The Acting Executive Director shall submit this order, Chapter 10 and Appendix A to the Office of the General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.
- (c) The Acting Executive Director of the Board shall certify this order, Chapter 10 and Appendix A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order is effective upon publication in the *Pennsylvania Bulletin*.

KAREN MOLCHANOW
Acting Executive Director

CHAPTER 10. SAFE SCHOOLS

GENERAL PROVISIONS

§ 10.1. Statutory authority

The statutory authority for this chapter is Article XIII-A of the Public School Code of 1949 (24 P.S. §§ 13-1301-A—13-1313-A (relating to safe schools)), including specifically section 1302.1-A (24 P.S. § 13-1302.1-A (relating to regulations)).

§ 10.2. Purpose

The purpose of this chapter is to establish and maintain a cooperative relationship between school entities and local police departments in the reporting and resolution of incidents that occur on school property, at any school sponsored activity, or on a conveyance as described in the Safe Schools Act (such as a school bus) providing transportation to or from a school or school sponsored activity.

§ 10.3. Definitions

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Chief school administrator—The superintendent of a public school district, executive director of an area vocational-technical school, executive director of an intermediate unit or chief executive officer of a charter school, including a cyber charter school.

IEP—Individualized education program.

Incident—An instance involving an act of violence, the possession of a weapon by any person, the possession, use, or sale of a controlled substance or drug paraphernalia as defined in The Controlled Substance, Drug, Device and Cosmetic Act, as amended (35 P.S. §§ 780-101 – 780-144), the possession, use, or sale of alcohol or tobacco by any person on school property, or conduct that constitutes an offense under section 1303-A(b)(4.1) or (4.2) of the School Code (24 P.S. § 13-1303-A(b)(4.1), (4.2) (relating to reporting)).

Local police department—A police department having jurisdiction over school property of the school entity.

Memorandum of understanding—A confirmation of mutually agreed upon terms between two or more parties, in the form of a document mutually agreed to by a school entity and a local

police department as required by section 1303-A(c) of the School Code (24 P.S. § 13-1303-A(c)).

Positive behavior support plan—A plan for a student with a disability or eligible young child who requires specific intervention to address behavior that interferes with learning. A positive behavior support plan is developed by the IEP team, is based on a functional behavior assessment, and becomes part of the individual eligible young child's or student's IEP. These plans include methods that utilize positive reinforcement and other positive techniques to shape a student's or eligible young child's behavior, ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards.

School-based diversion program—A program that, in partnership with other stakeholders, diverts youth out of the juvenile justice system. A school-based diversion program may include a youth aid panel in which a panel of community members decides an appropriate resolution to hold a student accountable for the student's actions by, among other options, requiring the student to complete educational activities, community service, restitution and any other related program or service.

School-wide positive behavior support—A school-wide, evidence-based and data-driven approach to improving school behavior that seeks to reduce unnecessary student disciplinary actions and promotes a climate of greater productivity, safety and learning.

School Code—The Public School Code of 1949 (24 P.S. §§ 1-101—27-2702).

School entity—A public school district, intermediate unit, area vocational-technical school or charter school, including a cyber charter school.

Student with a disability—A student who meets the definition of “student with a disability” or for whom an evaluation is pending under § 14.101 (relating to definitions).

Protected handicapped student—A student who meets the definition of “protected handicapped student” or for whom an evaluation is pending under § 15.2 (relating to definitions).

MEMORANDUM OF UNDERSTANDING

§ 10.4. Memorandum of understanding.

(a) Each chief school administrator shall execute and update, on a biennial basis, a memorandum of understanding with each local police department having jurisdiction over school property of the school entity.

(b) A memorandum of understanding between a school entity and a local police department, including its development and implementation, shall meet the requirements of section 1303-A(c) of the School Code (24 P.S. § 13-1303-A(c)).

(c) In developing a memorandum of understanding to execute with a local police department, a school entity shall consult and consider the model memorandum of understanding promulgated by the Board (*see* Appendix A).

(d) On a biennial basis, a school entity shall file with the Department's Office for Safe Schools a memorandum of understanding with each local police department having jurisdiction over property of the school entity. As part of its filing with the Department, a school entity shall identify any substantive differences between the memorandum of understanding adopted by the school entity and the model memorandum of understanding and provide a statement of reasons for the differences.

(e) The Board, on a biennial basis, will review and, as necessary, revise its model memorandum of understanding (*see* Appendix A). As part of its biennial review, the Board will consider the memoranda of understanding filed by school entities with the Department's Office for Safe Schools and statements explaining school entities' reasons for adopting a memorandum of understanding having substantive differences with the model memorandum of understanding. The Board will announce revisions to the model memorandum of understanding by notice published in the *Pennsylvania Bulletin*.

NOTIFICATION OF INCIDENTS

§ 10.5. Immediate notification

(a) The chief school administrator, or his designees, shall immediately notify the local police department when an offense listed under section 1303-A(b)(4.1) of the School Code (24 P.S. § 13-1303-A(b)(4.1)) occurs on school property, at any school sponsored activity or on a conveyance as described in the Safe Schools Act (such as a school bus) providing transportation to or from a school or school sponsored activity.

(b) Notification shall be made to the local police department by the most expeditious means practicable.

(c) As part of its notification of the incident to the local police department, the chief school administrator or his designees shall provide as much of the information described in this subsection as is available at the time of notification. However, the gathering of information shall not unnecessarily delay notification.

- (1) Whether the incident is in-progress or has concluded.
- (2) Nature of the incident.
- (3) Exact location of the incident.
- (4) Number of persons involved in the incident.
- (5) Names and ages of the individuals involved.
- (6) Weapons, if any, involved in the incident.
- (7) Whether the weapons, if any, have been secured and, if so, the custodian of the weapons.
- (8) Injuries, if any.
- (9) Whether EMS or the Fire Department were notified.
- (10) Identity of the school contact person.
- (11) Identity of the witnesses, if any.
- (12) Whether the incident involves a student with a disability and, if so, the type of disability and its impact on the student's behavior.
- (13) Other such information as is known to the school entity and believed to be relevant to the incident.

(d) In responding to students who commit an incident listed under section 1303-A(b)(4.1) of the School Code (24 P.S. § 13-1303-A(b)(4.1)), a school entity may consider the propriety of utilizing available school-based programs, such as school-wide positive behavior supports, to address the student's behavior and shall notify law enforcement of the student's placement in the program. Nothing in this provision shall be read to limit law enforcement's discretion.

§ 10.6. Discretionary notification

(a) The chief school administrator, or his designees, may notify the local police department having jurisdiction when an offense listed under section 1303-A(b)(4.2) of the

School Code (24 P.S. § 13-1303-A(b)(4.2)) occurs on school property, at any school sponsored activity, or on a conveyance as described in the Safe Schools Act (such as a school bus) providing transportation to or from a school or school sponsored activity.

(b) In determining whether to notify the local police department of an incident described in subsection (a), the chief school administrator, or his designees, may consider the following factors:

- (1) The seriousness of the situation.
- (2) The school's ability to defuse or resolve the situation.
- (3) The child's intent.
- (4) The child's age.
- (5) Whether the student has a disability and, if so, the type of disability and its impact on the student's behavior.
- (6) Other factors believed to be relevant.

(c) In making a determination whether to notify law enforcement when an offense listed under section 1303-A(b)(4.2) of the School Code (24 P.S. § 13-1303-A(b)(4.2)) occurs on school property, at any school sponsored activity, or on a conveyance as described in the Safe Schools Act (such as a school bus) providing transportation to or from a school or school sponsored activity, and to the extent that it has authority, a school entity may consider addressing the student's behavior through the use of available school-based diversion programs and available school-wide positive behavior supports.

(d) Upon notification of the incident to the local police department, the chief school administrator or his designees shall provide as much of the information described in this subsection as is available at the time of notification. However, the gathering of information shall not unnecessarily delay notification.

- (1) Whether the incident is in-progress or has concluded.
- (2) Nature of the incident.
- (3) Exact location of the incident.

- (4) Number of persons involved in the incident.
- (5) Names and ages of the individuals involved.
- (6) Weapons, if any, involved in the incident.
- (7) Whether the weapons, if any, have been secured and, if so, the custodian of the weapons.
- (8) Injuries, if any.
- (9) Whether EMS or the Fire Department were notified.
- (10) Identity of the school contact person.
- (11) Identity of the witnesses, if any.
- (12) Whether the incident involves a student with a disability and, if so, the type of disability and its impact on the student's behavior.
- (13) Other such information as is known to the school entity and believed to be relevant to the incident.

§ 10.7. Response and handling of a student with a disability

(a) A school entity shall provide to each local police department having jurisdiction over property of the school entity a copy of its procedures on behavior support services no later than September 30, 2012. Thereafter, a school entity shall provide to each local police department a copy of its procedures on behavior support services each time they are revised by the school entity.

(b) A school entity shall invite representatives of each local police department having jurisdiction over property of the school entity to participate in trainings in the use of positive behavior supports, de-escalation techniques and appropriate responses to student behavior that may require immediate intervention, as provided by the school entity's special education plan (*see* § 14.104 (relating to special education plans)) and the school entity's positive behavior support program (*see* § 14.133 (relating to positive behavior support)).

(c) When a student with a disability commits an incident listed under section 1303-A(b)(4.1) of the School Code (24 P.S. § 13-1303-A(b)(4.1)) or section 1303-A(b)(4.2) of the

School Code (24 P.S. § 13-1303-A(b)(4.2)), the school entity shall respond in a manner that is consistent with the training provided in accordance with the school entity's special education plan and behavior support program (*see* § 14.104 (relating to special education plans)) and, if applicable, with the procedures, methods and techniques defined in the student's behavior support plan (*see* § 14.133 (relating to positive behavior support)).

(d) When a protected handicapped student commits an incident listed under section 1303-A(b)(4.1) of the School Code (24 P.S. § 13-1303-A(b)(4.1)) or section 1303-A(b)(4.2) of the School Code (24 P.S. § 13-1303-A(b)(4.2)), the school entity shall respond in a manner that is consistent with the student's service agreement.

(e) For a student with a disability who has a positive behavior support plan, upon notification to a local police department that a student with a disability has committed an incident listed under section 1303-A(b)(4.1) of the School Code (24 P.S. § 13-1303-A(b)(4.1)) or section 1303-A(b)(4.2) of the School Code (24 P.S. § 13-1303-A(b)(4.2)), a school entity shall act in accordance with § 14.133(h).

(f) For a protected handicapped student whose service agreement includes a positive behavior support plan, upon notification to a local police department that such a protected handicapped student has committed an incident listed under section 1303-A(b)(4.1) of the School Code (24 P.S. § 13-1303-A(b)(4.1)) or section 1303-A(b)(4.2) of the School Code (24 P.S. § 13-1303-A(b)(4.2)), a school entity shall act in accordance with § 15.3 (relating to protected handicapped students—general).

(g) For a student with a disability who does not have a positive behavior support plan, upon notification to a local police department that a student with a disability has committed an incident listed under section 1303-A(b)(4.1) of the School Code (24 P.S. § 13-1303-A(b)(4.1)) or section 1303-A(b)(4.2) of the School Code (24 P.S. § 13-1303-A(b)(4.2)), the school entity shall convene the student's IEP team. At this meeting, the IEP team shall consider whether a positive behavior support plan should be developed to address the student's behavior.

(h) For a protected handicapped student whose service agreement does not include a positive behavior support plan, upon notification to a local police department that such student has committed an incident listed under section 1303-A(b)(4.1) of the School Code (24 P.S. § 13-1303-A(b)(4.1)) or section 1303-A(b)(4.2) of the School Code (24 P.S. § 13-1303-A(b)(4.2)), the school entity, in consultation with the student's parents, shall consider whether a positive behavior support plan should be developed as part of the service agreement to address the student's behavior.

§ 10.8. Emergency and nonemergency response and preparedness

(a) Each school district, in cooperation with the local emergency management agency and the Pennsylvania Emergency Management Agency, annually shall develop and implement a comprehensive disaster response and emergency preparedness plan, as required by 35 Pa.C.S. § 7701(g) (relating to plans).

(b) A school district's comprehensive disaster response and emergency preparedness plan shall be consistent with the guidelines developed by the Pennsylvania Emergency Management Agency and other applicable state requirements, as required by 35 Pa.C.S. § 7701(g).

(c) In developing a comprehensive disaster response and emergency preparedness plan, a school district shall consider the framework presented in the National Incident Management System.

(d) A school district shall provide the emergency management agency of every county of which the school district is a part a copy of the district's comprehensive disaster response and emergency preparedness plan, as required by 35 Pa.C.S. § 7701(g).

(e) A school district shall provide to each local police department and each local fire department having jurisdiction over geographic territory of which the school district is a part a copy of the district's comprehensive disaster and response emergency preparedness plan.

(f) In an emergency, a school district shall follow the procedures outlined in its comprehensive disaster response and emergency preparedness plan, adopted pursuant to 35 Pa. C.S. § 7701(g).

(g) School entities shall furnish the following information to local police departments and local fire departments annually, no later than September 30, to assist local police and fire departments in responding to an emergency:

- (1) Blueprints or floor plans of the school buildings.
- (2) Aerial photo, map or layout of the school campus, adjacent properties and surrounding streets or roads.
- (3) Locations of predetermined or prospective command posts.
- (4) Current teacher/employee roster.
- (5) Current student roster.
- (6) Current school yearbook.
- (7) School fire-alarm shutoff location and procedures.

- (8) School sprinkler system shutoff location and procedures.
- (9) Gas/utility line layouts and shutoff valve locations.
- (10) Cable/satellite television shutoff location and procedures.
- (11) Other information the school entity deems pertinent to assist local police departments in responding to an emergency.

§ 10.9. Notification to parents/guardians

(a) A school entity shall immediately notify, as soon as practicable, the parent or guardian of a victim or suspect directly involved in an incident listed under section 1303-A(b)(4.1) of the School Code (24 P.S. § 13-1303-A(b)(4.1)) or section 1303-A(b)(4.2) of the School Code (24 P.S. § 13-1303-A(b)(4.2)). In making the notification, the school entity shall inform the parent or guardian as to whether the local police department having jurisdiction over property of the school entity has been, or may be, notified of the incident.

(b) A school entity shall document attempts made to reach the parent or guardian of a victim or suspect directly involved in an incident listed under section 1303-A(b)(4.1) of the School Code (24 P.S. § 13-1303-A(b)(4.1)) or section 1303-A(b)(4.2) of the School Code (24 P.S. § 13-1303-A(b)(4.2)).

APPENDIX A

Model Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN

(Law Enforcement Authority)

and

(School Entity)

(Date)

I. Introduction

A. Parties

The following Law Enforcement Authority or Authorities agree to follow the policies and procedures contained in this Memorandum of Understanding (hereinafter "Memorandum"):

The following School Entity or Entities agree to follow the policies and procedures contained in this Memorandum:

- B. This Memorandum establishes procedures to be followed when certain incidents – described in Section II below – occur on school property, at any school sponsored activity, or on a conveyance as described in the Safe Schools Act (such as a school bus) providing transportation to or from a school or school sponsored activity. This Memorandum does not cover incidents that are outside of those school settings and create no substantial disruption to the learning environment.
- C. The parties seek to foster a relationship of cooperation and mutual support and to maintain a safe school environment.

D. Legal Authority

- 1. The parties make this agreement as required by Article XIII-A of the Public School Code of 1949, popularly known as the “Safe Schools Act,” *as amended*, 24 P.S. §§ 13-1301-A—13-1313-A.
- 2. In so recognizing this legal authority, the parties acknowledge their respective duties pursuant to the Safe Schools Act and hereby agree to support and cooperate with one another in carrying out their joint and several responsibilities thereunder.
- 3. Information From Student Records
 - a. The Law Enforcement Authority shall be governed by the following reporting and information exchange guidelines:
 - i. Criminal History Record Information Act, 18 Pa.C.S. § 9101 *et seq.*
 - ii. The prohibition against disclosures, specified in section IV(C)(5) of this Memorandum.
 - b. When sharing information and evidence necessary for the Law Enforcement Authority to complete its investigation, the School Entity shall:
 - i. Comply with the Family Educational Rights and Privacy Act (hereinafter “FERPA”), 20 U.S.C. § 1232g, and its implementing regulations at 34 C.F.R. § 99.1 *et seq.*, and 22 Pa. Code §§ 12.31-12.33, including any amendments thereto.
 - ii. Comply with the requirements of the Safe Schools Act, 24 P.S. §§ 13-1303-A and 13-1313-A, and any amendments thereto.
 - iii. Complete reports as required by section 1303-A of the Safe Schools Act, 24 P.S. § 13-1303-A, and any amendments thereto.
 - c. The School Entity may disclose personally identifiable information from an educational record of a student to the Law Enforcement Authority if a health or

safety emergency exists and knowledge of that information is necessary to protect the health or safety of the student or other individuals. In determining whether a health or safety emergency exists, the School Entity may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the School Entity determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to the Law Enforcement Authority, if knowledge of that information is necessary for the Law Enforcement Authority to protect the health or safety of the student or other individuals. The School Entity must record the articulable and significant threat to the health or safety of a student or other individuals so that it can demonstrate – to parents, students and the Family Policy Compliance Office¹ – what circumstance led it to determine that a health or safety emergency existed and why the disclosure was justified.

E. Priorities of the Law Enforcement Authority

1. Help the School Entity prevent delinquent acts through preventive measures, including referrals to support services, diversionary programs, restorative practices, school-wide positive behavior supports, education and deterrence.
2. Investigate as appropriate all incidents reported to have occurred on school property, at any school sponsored activity, or on a conveyance as described in the Safe Schools Act (including a school bus) providing transportation to or from a school or school sponsored activity. The investigation of all reported incidents shall be conducted in the manner that the Law Enforcement Authority, in its sole discretion, deems appropriate; but any investigation shall be conducted so as to involve as little disruption to the school environment as is practicable.
3. Identify those responsible for the commission of the reported incident and, where appropriate, apprehend and prosecute those individuals. Identification and apprehension procedures shall involve as little disruption to the school environment as is practicable.
4. Establish and maintain a cooperative relationship with the School Entity in the reporting and resolution of all incidents described in Section II of this document.

F. Priorities of the School Entity

1. Help law enforcement prevent delinquent acts through preventive measures, including referrals to support services, diversionary programs, restorative practices, school-wide positive behavior supports, education and deterrence.
2. Create a safe learning environment.

¹ Questions related to FERPA should be directed to the Family Policy Compliance Office within the U.S. Department of Education.

3. Establish and maintain a cooperative relationship with the Law Enforcement Authority in the reporting and resolution of all incidents described in Section II of this document.
4. Provide the Law Enforcement Authority with all relevant information and required assistance in the event of a reported incident.
5. The School Entity shall give the Law Enforcement Authority a copy of the School Entity's behavior support services procedures and invite Law Enforcement Authority representatives to behavior support trainings.

II. Notification of Incidents to Law Enforcement

The School Entity is required to notify law enforcement in specific situations listed in subsection A of this section, and has discretion over whether to notify law enforcement about incidents listed in subsection B of this section. Law enforcement's decision to investigate and file charges may be made in consultation with school administrators.

A. Mandatory Notification

1. The School Entity shall immediately notify the Law Enforcement Authority having jurisdiction where the offense occurred by the most expeditious means practicable of any of the following incidents occurring on school property, at any school sponsored activity, or on a conveyance as described in the Safe Schools Act (including a school bus) providing transportation to or from a school or school sponsored activity:
 - a. The following offenses under 18 Pa.C.S (relating to crimes and offenses):
 - i. Section 908 (relating to prohibited offensive weapons).
 - ii. Section 912 (relating to possession of weapon on school property).
 - a. As used in the Memorandum, the term "weapon" includes, but is not limited to, a knife, cutting instrument, cutting tool, nunchaku, firearm, shotgun, rifle, metal knuckles, billy club, blackjack, grenade, incendiary device, and any other tool, instrument or implement capable of inflicting serious bodily injury.
 - b. This reporting requirement does not apply to a weapon that is: (a) used, as part of a school-approved program, by an individual who is participating in the program; or (b) an unloaded weapon possessed by an individual while traversing school property for the purpose of obtaining access to public or private lands used for lawful hunting, so long as the entry on school premises is authorized by school authorities.

- iii. Chapter 25 (relating to criminal homicide).
 - iv. Section 2702 (relating to aggravated assault).
 - v. Section 2709.1 (relating to stalking).
 - vi. Section 2901 (relating to kidnapping).
 - vii. Section 2902 (relating to unlawful restraint).
 - viii. Section 3121 (relating to rape).
 - ix. Section 3122.1 (relating to statutory sexual assault).
 - x. Section 3123 (relating to involuntary deviate sexual intercourse).
 - xi. Section 3124.1 (relating to sexual assault).
 - xii. Section 3124.2 (relating to institutional sexual assault).
 - xiii. Section 3125 (relating to aggravated indecent assault).
 - xiv. Section 3126 (relating to indecent assault).
 - xv. Section 3301 (relating to arson and related offenses).
 - xvi. Section 3307 (relating to institutional vandalism), when the penalty is a felony of the third degree.
 - xvii. Section 3502 (relating to burglary).
 - xviii. Section 3503(a) and (b)(1)(v) (relating to criminal trespass).
 - xix. Section 5501 (relating to riot).
 - xx. Section 6110.1 (relating to possession of firearm by minor).
- b. The possession, use or sale of a controlled substance or drug paraphernalia as defined in "The Controlled Substance, Drug, Device and Cosmetic Act," *as amended*, 35 P.S. §§ 780-101—780-144, popularly known as the "Drug Act."
- i. As used in this Memorandum, the term "controlled substance" shall include those that are defined in the Drug Act, including marijuana, cocaine, crack cocaine, heroin, LSD, PCP, amphetamines, steroids and other substances commonly known as "designer drugs." *See* 35 P.S. § 780-101 *et seq.*

- ii. Included in this reporting provision shall be the possession, use or sale of drug paraphernalia, as defined in the Drug Act, including hypodermic syringes, needles and, depending on the circumstances, rolling papers, as well as all other equipment or materials utilized for the purpose of ingesting, inhaling or otherwise introducing controlled substances into the body. *See* 35 P.S. § 780-102.
 - c. Attempt, solicitation or conspiracy to commit any of the offenses listed in paragraphs 1 and 2 of this subsection.
 - d. An offense for which registration is required under 42 Pa. C.S. § 9795.1 (relating to registration).
2. In responding to students who commit an incident listed under section 1303-A(b)(4.1) of the School Code (24 P.S. § 13-1303-A(b)(4.1)), a school entity may consider the propriety of utilizing available school-based programs, such as school-wide positive behavior supports, to address the student's behavior. Nothing in this provision shall be read to limit law enforcement's discretion.

B. Discretionary Notification

1. The School Entity may notify the Law Enforcement Authority having jurisdiction where the incident occurred of any of the following incidents occurring on school property, at any school sponsored activity, or on a conveyance as described in the Safe Schools Act (including a school bus) providing transportation to or from a school or school sponsored activity:
 - a. The following offenses under 18 Pa.C.S (relating to crimes and offenses):
 - i. Section 2701 (relating to simple assault).
 - ii. Section 2705 (relating to recklessly endangering another person).
 - iii. Section 2706 (relating to terroristic threats).
 - iv. Section 2709 (relating to harassment).
 - v. Section 3127 (relating to indecent exposure).
 - vi. Section 3307 (relating to institutional vandalism), when the penalty is a misdemeanor of the second degree.
 - vii. Section 3503(b)(1)(i), (ii), (iii) and (iv), (b.1) and (b.2) (relating to criminal trespass).
 - viii. Chapter 39 (relating to theft and related offenses).
 - ix. Section 5502 (relating to failure of disorderly persons to disperse upon

official order).

- x. Section 5503 (relating to disorderly conduct).
 - xi. Section 6305 (relating to sale of tobacco).
 - xii. Section 6306.1 (relating to use of tobacco in schools prohibited).
 - xiii. Section 6308 (relating to purchase, consumption, possession, or transportation of liquor or malt or brewed beverages by a person under 21 years of age).
- b. Attempt, solicitation or conspiracy to commit any of the offenses listed in subsection (a).
2. In exercising its discretion to determine whether to notify law enforcement of such incidents, the School Entity may consider the following factors: the seriousness of the situation, the school's ability to defuse or resolve the situation, the child's intent, the child's age, whether the student has a disability and, if so, the type of disability and its impact on the student's behavior, and other factors believed to be relevant.

C. Law Enforcement Response to Notification

- 1. When notified of an incident listed in subsections A or B, law enforcement's decision to investigate and file charges, at the sole discretion of the Law Enforcement Authority, may be made in consultation with school administrators.
- 2. In determining whether to file charges, the Law Enforcement Authority is encouraged to consult with the District Attorney. Where appropriate under the law, part of this consultation may include a discussion about the availability or propriety of utilizing a diversionary program as an alternative to filing charges.

D. Notification of the Law Enforcement Authority when incident involves children with disabilities

- 1. If a child with a disability commits an incident of misconduct, school administrators and the Law Enforcement Authority should take into consideration that the child's behavior may be a manifestation of the disability and there may be no intent to commit an unlawful act. A child with a disability under this subsection shall mean a student with an IEP, a protected handicapped student with a service agreement that includes a behavior support plan, or such student for whom an evaluation is pending under 22 Pa. Code §§ 14.123 (relating to evaluation), 15.5 (relating to school district initiated evaluation and provision of services) or § 15.6 (relating to parent initiated evaluation and provision of services).
- 2. In the event a child with a disability commits a mandatory notification offense under Subsection A, the School Entity must provide immediate notification to the Law

Enforcement Authority regardless of the disability. Such notification will state that the child has an IEP or a service agreement that includes a behavior support plan and may include the School Entity's recommendation that police intervention may not be required and advisement that the School Entity will act to address the student's behavior need as required by applicable federal and state law and regulations, including 22 Pa. Code § 14.133 (relating to positive behavior support) or 22 Pa. Code § 15.3 (relating to protected handicapped students-general). The Law Enforcement Authority may take the recommendation under advisement but reserves the right to investigate and file charges.

3. In the event a child with a disability commits a discretionary offense under Subsection B and the School Entity does not believe that police intervention is necessary, the School Entity will address the student's behavior need as required by applicable federal and state law and regulations, including 22 Pa. Code § 14.133 (relating to positive behavior support) or 22 Pa. Code § 15.3 (relating to protected handicapped students-general).
4. In accordance with 34 CFR 300.535 (relating to referral to and action by law enforcement and judicial authorities), nothing will prohibit the School Entity from reporting an offense committed by a child with a disability to the Law Enforcement Authority, and nothing will prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.
5. The School Entity, when reporting an offense committed by a child with a disability, should ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the Law Enforcement Authority to whom the incident was reported.
6. The School Entity, when reporting an incident under this section, may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by FERPA.

[Describe any specific procedures to be followed for incidents involving a student with a disability having an IEP as required by 22 Pa. Code § 14.104 (relating to special education plans)]

- E. Upon notification of the incident to the Law Enforcement Authority, the School Entity shall provide as much of the following information as is available at the time of notification. In no event shall the gathering of information unnecessarily delay notification:

1. Whether the incident is in-progress or has concluded.

2. Nature of the incident.
 3. Exact location of the incident.
 4. Number of persons involved in the incident.
 5. Names and ages of the individuals involved.
 6. Weapons, if any, involved in the incident.
 7. Whether the weapons, if any, have been secured and, if so, the custodian of the weapons.
 8. Injuries involved.
 9. Whether EMS or the Fire Department have been notified.
 10. Identity of the school contact person.
 11. Identity of the witnesses to the incident, if any.
 12. Whether the incident involves a student with a disability and, if so, the type of disability and its impact on the student's behavior.
 13. Other such information as is known to the school entity and believed to be relevant to the incident.
- F. The School Entity shall annually, no later than September 30, give the following information to the Law Enforcement Authority:
1. Blueprints or floor plans of the school buildings.
 2. Aerial photo, map or layout of the school campus, adjacent properties and surrounding streets or roads.
 3. Location(s) of predetermined or prospective command posts.
 4. Current teacher/employee roster.
 5. Current student roster.
 6. Current school yearbook.
 7. School fire-alarm shutoff location and procedures.
 8. School sprinkler system shutoff location and procedures.
 9. Gas/utility line layouts and shutoff valve locations.
 10. Cable/satellite television shutoff location and procedures.
 11. Other information the School Entity deems pertinent to assist local police departments in responding to an emergency

III. Law Enforcement Authority Response

- A. Depending on the totality of the circumstances, initial response by the Law Enforcement Authority may include:
1. For incidents in progress:
 - a. Meet with contact person and locate scene of incident.
 - b. Stabilize incident.
 - c. Provide/arrange for emergency medical treatment, if necessary.
 - d. Control the scene of the incident.
 - i. Secure any physical evidence at the scene.
 - ii. Identify involved persons and witnesses.
 - e. Conduct investigation.

- f. Exchange information.
- g. Confer with school officials to determine the extent of law enforcement involvement required by the situation.

2. Incidents not in progress:

- a. Meet with contact person.
- b. Recover any physical evidence.
- c. Conduct investigation.
- d. Exchange information.
- e. Confer with school officials to determine the extent of law enforcement involvement required by the situation.

3. Incidents initially reported to the Law Enforcement Authority

If any incident described in sections IIA or IIB is initially reported to the Law Enforcement Authority, the Law Enforcement Authority shall proceed directly with its investigation, shall immediately notify the School Entity of the incident, and shall proceed as outlined in sections IIA through IIE.

B. Custody of Actors

1. Students identified as actors in reported incidents may be taken into custody at the discretion of the investigating law enforcement officer under any of the following circumstances:
 - a. The student has been placed under arrest.
 - b. The student is being placed under investigative detention.
 - c. The student is being taken into custody for the protection of the student.
 - d. The student's parent or guardian consents to the release of the student to law enforcement custody.
2. The investigating law enforcement officer shall take all appropriate steps to protect the legal and constitutional rights of those students being taken into custody.

IV. Assistance of School Entities

A. *In Loco Parentis*

1. Teachers, Guidance Counselors, Vice Principals and Principals in the public schools have the right to exercise the same authority as a parent, guardian or person in parental relation to such pupil concerning conduct and behavior over the pupils attending a school during the time they are in attendance, including the time required in going to and from their homes.

2. School authorities' ability to stand *in loco parentis* over children does not extend to matters beyond conduct and discipline during school, school activities, or on a conveyance as described in the Safe Schools Act providing transportation to or from school or a school sponsored activity.
- B. Notification of Parent or Guardian
1. Parents or guardians of all victims and suspects directly involved in an incident listed under Section IIA or IIB shall be immediately notified of the involvement, and they shall be informed about any notification regarding the incident that has been, or may be, made to the Law Enforcement Authority.
 2. The School Entity shall document attempts made to reach the parents or guardians of all victims and suspects directly involved in incident listed under Section IIA or IIB.
- C. Scope of School Entity's Involvement
1. General Principles: Once the Law Enforcement Authority assumes primary responsibility for a matter, the legal conduct of interviews, interrogations, searches, seizures of property, and arrests are within the purview of the Law Enforcement Authority. The School Entity shall defer to the Law Enforcement Authority on matters of criminal and juvenile law procedure, except as is necessary to protect the interests of the School Entity. The Law Enforcement Authority will keep the chief school administrator, or his designees, informed of the status of pending investigations.
 2. Victims
 - a. The School Entity shall promptly notify the parent or guardian of a victim when the Law Enforcement Authority interviews that victim. The Law Enforcement Authority shall follow its policies and procedures when interviewing a victim to ensure the protection of the victim's legal and constitutional rights.
 - b. In the event a victim is interviewed by Law Enforcement Authority on school property, a guidance counselor or similar designated personnel may be present during the interview.
 3. Witnesses
 - a. The School Entity shall promptly notify the parent or guardian of a witness when the Law Enforcement Authority interviews that witness. The Law Enforcement Authority shall follow its policies and procedures when interviewing a witness to ensure the protection of the witness's legal and constitutional rights.

- b. In the event a witness is interviewed by the Law Enforcement Authority on school property, a guidance counselor or similar designated personnel should be present during the interview.

4. Suspects and Custodial Interrogation

- a. The School Entity shall help the Law Enforcement Authority to secure the permission and presence of at least one parent or guardian of a student suspect before that student is interrogated by law enforcement authorities.
- b. When a parent or guardian is not present, school authorities shall not stand *in loco parentis* (in the place of the parent/guardian) during an interview.
- c. If an interested adult cannot be contacted, the School Entity shall defer to the investigating Law Enforcement Authority, which will protect the student suspect's legal and constitutional rights as required by law.

5. Conflicts of Interest

- a. The parties to this Memorandum recognize that if a School Entity employee, contractor, or agent of the School Entity is the subject of an investigation, a conflict of interest may exist between the School Entity and the adult suspect.
- b. Neither the individual that is the subject of the investigation, nor any person acting as his/her subordinate or direct supervisor, shall be present during Law Enforcement Authority's interviews of student co-suspects, victims or witnesses by the Law Enforcement Authority.
- c. Neither the individual who is the subject of the investigation, nor his/her subordinate(s) and/or direct supervisor(s), shall be informed of the contents of the statements made by student co-suspects, victims or witnesses, except at the discretion of the Law Enforcement Authority or as otherwise required by law.

D. Reporting Requirements

All school entities are required to submit an annual report, which will include violence statistics and reports, to the Department of Education's Office for Safe Schools. This annual report must include all new incidents described in Sections IIA and IIB. Before submitting the required annual report, each chief school administrator and each police department having jurisdiction over school property of the School Entity shall do the following:

- a. No later than thirty days prior to the deadline for submitting the annual report, the chief school administrator shall submit the report to the police department with jurisdiction over the relevant school property. The police department

shall review the report and compare the data regarding criminal offenses and notification of law enforcement to determine its accuracy.

- b. No later than fifteen days prior to the deadline for submitting the annual report, the police department shall notify the chief school administrator, in writing, whether the report accurately reflects police incident data. Where the police department determines that the report accurately reflects police incident data, the chief of police shall sign the report. Where the police department determines that the report does not accurately reflect police incident data, the police department shall indicate any discrepancies between the report and police incident data.
- c. Prior to submitting the annual report, the chief school administrator and the police department shall attempt to resolve discrepancies between the report and police incident data. Where a discrepancy remains unresolved, the police department shall notify the chief school administrator and the office in writing.
- d. Where a police department fails to take action as required under clause a or b, the chief school administrator shall submit the annual report and indicate that the police department failed to take action as required under clause a or b.
- e. Where there are discrepancies between the School Entity's incident data and the police incident data, the following shall occur:

[Describe procedure to be followed for the resolution of school violence data discrepancies prior to filing the annual report] _____

V. General Provisions

- A. This Memorandum does not create any contractual rights or obligations between the signatory Law Enforcement Authority, the signatory School Entity, any other signatory authorities or entities, or their respective officers, employees, agents or representatives.
- B. This Memorandum may be amended, expanded or modified at any time upon the written consent of the parties. It must be reviewed and re-executed within two years of the date of its original execution and every two years thereafter.
- C. If changes in state or federal law require changes to this Memorandum, the parties shall amend this Memorandum.
- D. All parties to this Memorandum will communicate fully and openly with each other in order to resolve any problems that may arise in the fulfillment of the terms of this Memorandum.

Chief School Administrator

School Entity

Chief Law Enforcement Authority

Law Enforcement Authority

Building Principal

School Building



COMMONWEALTH OF PENNSYLVANIA
STATE BOARD OF EDUCATION

January 26, 2012

Mr. David Sumner
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17126

RECEIVED
IRRC
2012 JAN 26 A 2:53

Dear Mr. Sumner:

Enclosed is a copy of a final omitted regulation approved by the State Board of Education (22 Pa. Code, Chapter 10 –Safe Schools, #006-325) for review and action by the Commission pursuant to section 5.1(c) of the Regulatory Review Act.

The State Board of Education will provide the Commission with any assistance it requires to facilitate a thorough review of this final-omitted regulation.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Molchanow".

Karen Molchanow
Acting Executive Director

Enclosure

cc: Secretary Ron Tomalis
Gregory Dunlap, Esq.
Jim Willshier
Larry Wittig

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 6-325
SUBJECT: SAFE SCHOOLS
AGENCY: STATE BOARD OF EDUCATION

TYPE OF REGULATION

Proposed Regulation
Final Regulation
X Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

RECEIVED
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2012 JAN 26 A 2:53

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON EDUCATION
1/26/12	<u>Eileen Kruck</u>	MAJORITY CHAIRMAN <u>Representative Paul Clymer</u>
1/26/12	<u>Kathleen Thomas</u>	SENATE COMMITTEE ON EDUCATION
		MAJORITY CHAIRMAN <u>Senator Jeffrey Piccola</u>
	<u>Cheryl John 1/26/12</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
	<u>Lisa Selinger 01/26/12</u>	ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

January 26, 2012